

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 423 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABUBHAI KALAJI

Versus

LILACHAND KALIDAS

Appearance:

MR JR NANAVATI for Petitioner

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/06/97

ORAL JUDGEMENT

A short but interesting question, which has come up for consideration and adjudication in this revision under Section 29(2) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act"), is whether the petitioner-tenant is liable for eviction on the ground of arrears of rent under Section 12(3)(b) or not. The respondent herein is the original plaintiff-landlord and the petitioner is the original

defendant-tenant against whom eviction suit, being H.R.P. No.231 of 1970, came to be filed in the Court of the Small Causes, Ahmedabad, on mainly following three grounds:-

- (1) For reasonable and bona fide requirement of the demised shop under Section 13(1)(g);
- (2) For illegal transfer and subletting under Section 13(1)(e); and
- (3) For arrears of rent of two months under Section 12(3)(b).

The parties are hereinafter referred to as "landlord" and "tenant" for the sake of convenience and brevity.

Respondent is a tenant of the demised premises which consist of a shop situated in Umianagar Co-Operative Housing Society, at Asarwa Ward. It was let to tenant for the purpose of shop and the rent was initially fixed at Rs.75/- per month exclusive of taxes and electrical charges. The said premises are hereinafter referred to as "demised shop".

The tenant appeared and resisted the suit by filing written statement, Ex.10, and raised also even the dispute of contractual rent. According to the case of the tenant, agreed rent was Rs.45/- per month and not Rs.75/-. He also denied the liability for payment of taxes. He had, therefore, prayed for fixation of standard rent. He also raised the specific contention that the plaintiff-landlord had taken an amount of Rs.2000/- by way of deposit in relation to the demised shop. Other grounds were denied, to which we are not concerned in this revision as this revision is confined only to the issue of non-payment of rent. Incidentally, it may be mentioned that the Trial Court dismissed the suit holding that the landlord is not entitled to possession on any one of the three grounds, i.e. the grounds raised in the suit by the landlord came to be decided against the landlord. However, the standard rent came to be fixed at Rs.51/- as per the compromise in the standard Rent Application No.3415 of 1969.

On an appeal, decree came to be passed for eviction on the ground of non-payment of rent, in Civil Appeal No.38 of 1976 by the Bench of the Small Causes Court, at Ahmedabad. Other two grounds of eviction were not upheld. In short, the Appellate Bench recorded a decree for ejectment against the tenant and in favour of the

landlord only on the ground of non-payment of rent during the pendency of period of appeal, regularly, which is challenged by the tenant by filing this revision application under Section 29(2) of the Bombay Rent Act. The Appellate Bench, thus, found that the tenant was liable for eviction as he had not paid the rent regularly, pending an appeal.

Following aspects are not in controversy and have remained otherwise also unimpeachable which are very relevant and material for the effective adjudication of the revision on hand :-

- (1) The tenant was served with a notice, Ex.46, dated 24.11.1969, which was received by him on 28.11.1969.
- (2) Notice was replied, which was received by the landlord on 5.12.1969.
- (3) The rent was due only for a period of two months at the time of notice, Ex.46.
- (4) No rejoinder of reply was given. It is mentioned because in reply to notice, it was specifically stated that tenant was ready and willing to pay the rent and also that the landlord had illegally taken deposits at the time of inception of lease in 1964.
- (5) It is not in dispute that when the notice came to be served, only Rs.1000/- came to be adjusted against the amount of Rs.2000/- which was taken by the landlord as deposit.

After having dispassionately examined the facts and circumstances emerging from the entire record of the case, this Court has no hesitation, whatsoever, in holding that the passing of decree for arrears of rent under Section 12(3)(b) is not legal and valid. Section 12 of the Bombay Rent Act, before its amendment of 1985, read as under :-

- "12. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(1A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to,-

(a) the standard rent and permitted increases due for the premises,

(b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed or unfit.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter,-

(i) continuous to pay or tender in Court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit as directed by the Court.

- (4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the court thinks fit.

Explanation:- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act, the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

It could very well be seen from the aforesaid provision that no ejectment could be directed if tenant pays and is ready and willing to pay the standard rent and permitted increases in terms of section 12(1) of the Bombay Rent Act. Again, it is very clear from the provisions of section 12, sub-section (2) that the suit for recovery of possession on the ground of arrears of rent shall not be competent unless the conditions prescribed in sub-section (2) of section 12 are fully complied with. It is, therefore, obvious and explicit that demand of arrears of rent by a notice in writing ought to be made in the manner provided in sub-section (2). It is mandatory to comply with the conditions of sub-section (2) of Section 12. No eviction suit shall be competent for recovery of possession against the tenant on the ground of non-payment of standard rent and permitted increases due until the expiration of one month next after the notice in writing of demand of the standard rent and permitted increases is served in the manner provided in Section 106 of the Transfer of Property Act, 1882.

It is, in this context, it would be pertinent and expedient to mention that learned Advocate for the respondent-original plaintiff-landlord has rightly and fairly stated that, in the notice, Ex.46, there was no specific demand of rent as contemplated by sub-section (2) of Section 12. This aspect itself is sufficient to quash the decree for ejectment recorded by the Appellate Bench on the ground of arrears of rent. Therefore, it would not be necessary to examine other aspects and submissions raised in the course of the hearing of this revision. However, this Court is unable to resist the

temptation of making and placing it on record in the light of the factual scenario emerging from the record of the case that, in view of demand of only 2 months rent and the fact that the amount of Rs.1000/- was lying with the landlord towards the deposit and the fact that dispute of standard rent was raised within the period of one month and the amount of arrears of rent was paid no sooner the standard rent was fixed, the case is governed by the provisions of sub-section (1) of section 12 of the Bombay Rent Act. Therefore, irrespective of the above fair submission with regard to the notice under section 12(2), this Court has unhesitatingly found that the ejectment decree recorded by the Appellate Bench on the ground of arrears of rent under Section 12(3)(b) is neither legal nor valid as the case is clearly governed by the provisions of sub-section(1) of section 12 of the Bombay Rent Act.

Consequently, the judgment and decree directing the eviction against the tenant in favour of the landlord in respect of the demised shop are hereby quashed while allowing the revision. Therefore, this revision against the impugned judgment and award shall stand allowed. Accordingly, Rule is made absolute in the circumstances with no order as to costs.

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